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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/651,530  | 08/29/2003  | Gary S. Takowsky     | GTI005              | 8874             |
| 28848   | 7590        | 08/05/2004           |                     | EXAMINER         |
| TOPE-MCKAY & ASSOCIATES<br>23852 PACIFIC COAST HIGHWAY #311<br>MALIBU, CA 90265 |             |                      | DAHBOUR, FADI H     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3743                |                  |

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/651,530             | TAKOWSKY, GARY S.   |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Fadi H. Dahbour        | 3743                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2 and 4-11 is/are rejected.

7)  Claim(s) 3 and 12-20 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 29 August 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-6, 8, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al.

Young discloses an emission bag for covering a nose and mouth in such a manner that pathogens transmitted from the nose and mouth will be confined to an interior of the emission bag (Figs. 1-12), comprising a piece of material with an opening (see top of Fig. 10), and a bag attached with the piece of material and opening such that an entrance to an interior of the emission bag is through the opening (see “bag 62” in line 29 of col.6, also see 62 in Fig.10), wherein the piece of material is constructed from a material selected from a group consisting of plastic, metal, and paperboard (see “plastic” in line 34 of col.6), wherein the piece of material has perforations allowing it to fold along the perforations and thereby creating two opposing sides (see top of Fig. 10, and see top of Fig.8), wherein the piece of material has an enclosure apparatus such that when the piece of material is folded along the perforations, the enclosure apparatus on the two opposing sides come into contact with each other and thereby seal the emission bag (see top of Fig.8), wherein the bag is constructed of a material selected from a group consisting of plastic, paper and cloth (see “plastic” in line 30 of col.6), wherein the bag has an entrance and a base and the entrance has an area and the base has an area, where the area of the entrance is smaller than the area of the base (Fig.8).

3. Claims 1, 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Yeager.

Yeager discloses an emission bag for covering a nose and mouth is such a manner that pathogens transmitted from the nose and mouth will be confined to an interior of the emission bag (Figs.1-12), comprising a piece of material with an opening (see "opening 22" in line 12 of col.6, also see 22 in Fig.2), and a bag (26 of Fig.2) attached with the piece of material and opening (Fig.2) such that an entrance to an interior of the emission bag is through the opening (22 of Fig.2), wherein the bag has small perforations allowing the bag to breathe (see "perforations 30" in line 60 of col.6, also see 30 in Figs.1 and 2) and medicated with an anti-septic on the interior of the bag such that emissions are sterilized upon passing through the small perforations from an interior of the bag to an exterior of the bag (see "preferably treated with antimicrobial agents" and "has been treated with antimicrobial agents" in lines 1-2 & 18-19 of col.7).

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Cruz.

Cruz discloses an emission bag for covering a nose and mouth is such a manner that pathogens transmitted from the nose and mouth will be confined to an interior of the emission bag (Figs.1-8), comprising a piece of material with an opening (see "opening 17" in line 16 of col.2, also see 17 in Fig.6), and a bag attached with the piece of material and opening (11 of Figs.4 & 6) such that an entrance to an interior of the emission bag is through the opening (Figs.4 & 6), wherein a top film is attached with the emission bag whereby manipulating the top film exposes the opening (see "a peel-away flexible layer 19" in line 23 of col.2, also see 19 of Fig.6).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al in view of Thomas.

Young, as described above, discloses all the features claimed except adhesive tabs, tape, Velcro, glue or twist-ties. Thomas discloses adhesive tabs, tape, Velcro, glue or twist-ties (see 26 of Figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the feature taught by Thomas, in the device of Young, for improved sealing.

***Allowable Subject Matter***

7. Claims 3, 12-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hall, Iscovich, Mitsuo and Utecht are cited to show bags.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadi H. Dahbour whose telephone number is 703-306-5479. The examiner can normally be reached on M-F, 9am-5:30pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Fadi H. Dahbour  
Examiner  
Art Unit 3743